

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

Andrea Young, et al.,)	
)	
Plaintiff,)	No. 1:19-cv-03526-JEB
)	
)	
v.)	
)	
)	
Alex M. Azar, et el.,)	
)	
Defendants.)	

**INTERVENOR’S EXPEDITED MOTION FOR PARTIAL SUMMARY
JUDGMENT**

For the reasons explained in the accompanying memorandum in support of this Motion, Intervenor, the Michigan Department of Health and Human Services (“MDHHS”), hereby moves for partial summary judgment solely on the issue of whether the federal approval of the community engagement requirements in the Healthy Michigan Plan (“HMP”) Section 1115 demonstration project is lawful. The Intervenor does not seek summary judgment on, and requests that the Court refrain from deciding at this stage of the litigation, the legality of the approval of the provisions of the HMP Demonstration that are unrelated to the work and community engagement requirements.

Respectfully submitted,

/s/ Toni L. Harris

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February 25, 2020

CERTIFICATE OF SERVICE

I hereby certify that on February 25, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which shall send notification of such filing to any CM/ECF participants.

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**INTERVENOR’S MEMORANDUM IN SUPPORT OF ITS
EXPEDITED MOTION FOR PARTIAL SUMMARY JUDGMENT**

Intervenor, the Michigan Department of Health and Human Services (“MDHHS”), requests an expedited decision on the issue of whether the Centers for Medicare & Medicaid Services’ (“CMS”) approval of the community engagement requirements included in the Healthy Michigan Plan Section 1115 demonstration project (“HMP Demonstration”) is lawful, in light of the D.C. Circuit’s decision in *Gresham v. Azar*, No. 19-5094.¹

* * * *

¹ Intervenor has consulted with Plaintiffs and the federal Defendants about this motion. Plaintiffs’ counsel stated: “Plaintiffs take no position on the motion. It is Plaintiffs’ position that, under the D.C. Circuit’s decision in *Gresham* and this Court’s decisions in *Stewart*, *Gresham*, and *Philbrick*, the Secretary’s December 21, 2018 approval of the HMP project as a whole must be vacated.” Defendants’ counsel stated: “At this time, the federal Defendants are not prepared to state their position with respect to Michigan’s motion. However, they intend to respond to the motion in their upcoming brief, due by March 3, 2020.”

Summary judgment is appropriate when there is no genuine dispute as to any material fact, and the moving party is plainly entitled to judgment as a matter of law. Fed. R. Civ. P. 56; *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986).

In this case, partial summary judgment is appropriate because there is no dispute that the community engagement requirements do not survive the decision in *Gresham*, absent further judicial review. The federal Defendants have already informed this Court that “the Secretary’s approval of the work and community engagement component of the Healthy Michigan Plan (‘HMP’) is not materially different from the approval of the work and community engagement components challenged in *Stewart* and *Gresham*” and that “if the D.C. Circuit . . . were to issue a straight merits affirmance of this Court’s reasoning in *Stewart* and *Gresham*, . . . the Secretary’s approval of HMP’s work and community engagement requirement would be unlawful under circuit precedent, absent further judicial review.” ECF Doc. 16, at 2. That is what has happened: the D.C. Circuit issued a decision in *Gresham v. Azar* that was an affirmance on the merits of this Court’s decision, and the State’s community engagement requirements are therefore “unlawful under circuit precedent, absent further judicial review.”

Nonetheless, MDHHS is concerned that until this Court issues an order *in this case* consistent with the decision in *Gresham*, MDHHS will be legally required to continue implementation of the community engagement requirements. As set forth in the accompanying Declaration of Robert Gordon, *see* Decl. of Robert Gordon (“Gordon Decl.”), ¶ 5 (attached as Exhibit A), MDHHS has been directed to implement

the community engagement requirements by the Michigan legislature, and may not “withdraw, terminate, or amend” the waiver “without the express approval of the legislature in the form of a bill enacted by law.” Mich. Pub. Act No. 208, § 107b(1), (11) (June 22, 2018). The terms and conditions of the HMP Demonstration likewise provide that “[b]eginning no sooner than January 1, 2020, the state will implement a community engagement requirement as a condition of eligibility for adult beneficiaries in HMP who are not otherwise subject to an exemption.” Healthy Michigan Plan Section 1115 Demonstration, 11-W-00245/5, Special Terms and Conditions, ¶ 28.

There are significant costs, both to MDHHS and the people it serves, of continuing to implement the community engagement requirements pending a decision by this Court. MDHHS is currently deploying substantial human and financial resources to implement the community engagement requirements. *See* Gordon Decl, ¶¶ 8-12. For example, MDHHS operates an ongoing reminder campaign with regular text messaging and outbound calls to beneficiaries, and operates a call center with full time customer service representatives to assist individuals in complying with the community engagement requirements. *Id.*, ¶ 12. On March 10, 2020, MDHHS will send a notice to more than 80,000 individuals² who did not comply with the community engagement reporting requirements for January, explaining that they will lose their Medicaid coverage if they do not report community engagement requirements for February and March, Gordon Decl. ¶ 10, although

² This number is based on current data, subject to revision. Gordon Decl. ¶ 10.

coverage would not be terminated until May 31, 2020. State law requires MDHHS to send this notice to beneficiaries who have failed to comply with the requirements for a single month,³ but the result would be pointless confusion and even fear for those individuals receiving the notice. Accordingly, it is important to the Intervenor and those enrolled in the Healthy Michigan Plan to know whether the community engagement requirements are unlawful as soon as possible. For this reason, Intervenor requests an expedited ruling on its Motion for Partial Summary Judgment.

However, the parties still must brief questions relating to the impact of *Gresham* on the many provisions of the HMP Demonstration that are *not* related to the community engagement requirements, and it may take this Court weeks or months to analyze and decide those complex issues after briefing is complete. Accordingly, MDHHS is seeking an expedited ruling *solely* as to implementation of the community engagement requirements. It intends to address the other aspects of Plaintiffs' Complaint, and the implications of invalidation of the community engagement requirements for the rest of the HMP Demonstration, in the briefing requested by this Court's order of January 14, ECF Doc. 14, under the amended schedule set forth in its order of February 21, 2020, ECF Doc. 22.

Respectfully submitted,

/s/ Toni L. Harris

³ Mich. Comp. Laws Ann. § 400.107b(2)(b) ("The department shall notify the recipient after each time a noncompliance month is used.").

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